



U.S. Department of Justice

Immigration and Naturalization Service

FI

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File:

Office: Nairobi

Date:

NOV 13 2000

IN RE: Petitioner:
Beneficiary:

Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT:

Identifying case related to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was found not to be readily approvable by the Officer in Charge, Nairobi, Kenya. Therefore, the officer in charge properly served the petitioner with notice of intent to deny the visa petition, and his reasons therefore, and ultimately denied the petition. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reconsider. The motion will be granted. The previous decision of the Associate Commissioner for Examinations will be affirmed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on May 11, 1999. The petitioner is a 34 year-old married citizen of the United States. The beneficiary, who at this time is 15 years old, was born in Addis Ababa, Ethiopia, on January 5, 1985. The beneficiary's biological mother, [REDACTED] and biological father, [REDACTED] have been identified in the record of proceeding and are stated by the petitioner to be deceased. The officer in charge denied the petition after determining that the beneficiary does not meet the statutory definition of "orphan" because the petitioner had submitted insufficient evidence to establish that the beneficiary's parents are deceased.

On appeal, counsel argued that the petitioner had submitted sufficient evidence to establish that the beneficiary's parents are deceased and that the beneficiary meets the definition of "orphan."

The Associate Commissioner dismissed the appeal, reasoning that the petitioner had submitted insufficient evidence to establish that the beneficiary's parents are deceased and that the beneficiary is an orphan, or that the adoption abroad was completed in accordance with the laws of the foreign-sending country.

On motion, counsel argues that the petitioner has complied with Ethiopia's adoption requirements, and resubmits briefs and evidence already contained within the record.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption...

The petitioner submitted a birth certificate showing that the beneficiary, [REDACTED] was born on January 5, 1985. The birth certificate indicates that the beneficiary's biological father is [REDACTED] and that her biological mother is [REDACTED] [sic]." The petitioner submitted a statement made by the beneficiary's uncle on June 22, 1999, in which he claimed that the beneficiary's parents are dead, that "the Family Arbitration Council decided that I should take this [sic] children and make them live in the one room house that I had" and that he had agreed to allow the petitioner and his wife to adopt the beneficiary. It is noted that there is no independent evidence within the record showing that the Family Arbitration Council found that the beneficiary's biological parents are dead and that the uncle has been given legal custody of the beneficiary. On motion counsel argues that the Ethiopian Civil code does not require that the Family Arbitration Council obtain court approval in order to appoint the beneficiary's biological uncle as her guardian.

The record also contains a sworn statement made by the beneficiary's uncle on July 14, 1999, before a U.S. consular associate of the U.S. Embassy in Addis Ababa, Ethiopia. In his statement, the uncle claimed that "the mother of these children died one year after she gave birth and their father died while the mother was pregnant."

The petitioner submitted birth certificates showing that the beneficiary and her sister, [REDACTED], are twins born on January 5, 1985. According to two death certificates contained within the record, the beneficiary's biological father died on November 30, 1984, and her biological mother died on June 29, 1986. However, there is contradictory information within the record regarding the status of the beneficiary's parents. The petitioner submitted a home study report dated March 16, 1999, in which the adoption case worker stated, subsequent to interviewing the petitioner and his wife, that the birth dates of the beneficiary and her sister are unknown, that it is unclear whether or not the beneficiary and her sister are twins, and that the girls' biological parents died when they were approximately five years old. Further, as a result of an orphan investigation, the Ethiopian government's Children, Youth and Family Affairs Department ("CYFAD") indicated to the consular office at the U.S. Embassy in Addis Ababa, Ethiopia, that the CYFAD "does not believe the parents...[of the beneficiary] are dead."

On motion, the petitioner submitted an affidavit in which he and his wife stated that they "misspoke" and that any incorrect information they provided to the adoption case worker had been provided to them by the beneficiary's Ethiopian relatives. The petitioner stated that although "[t]here was some conflict among family members over their dates of birth and dates of their parents['] death...we found out" that the beneficiary and her sister were born on January 5, 1985, and that the father died on

November 30, 1984, and the mother died on June 29, 1986. The petitioner has not explained why one family member's recollection of events is more credible than another family member's recollection.

In this case, the petitioner asserts that the uncle who consented to the adoption is more credible than the unnamed family member or members that the petitioner initially cited. It should be noted that in an interview with a consular officer in Addis Ababa, the same uncle now cited by the petitioner stated that the beneficiary's parents died in a "rural area" and that the death certificates were "unobtainable." The petitioner subsequently submitted the "unobtainable" death certificates, which were issued from the capital of Ethiopia, Addis Ababa, rather than the "rural area" in which the parents died. It is unclear how the government in Addis Ababa determined that the beneficiary's parents are dead as any documentation that may have been presented to the issuing authority is not contained within the record. The conflicting information regarding the status of the beneficiary's biological parents has not been resolved.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (Comm. 1988). The petitioner has submitted insufficient evidence to establish that the beneficiary's parents are deceased. Accordingly, the petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act. For this reason, the petition may not be approved.

Beyond the officer in charge's decision, the petitioner has submitted insufficient evidence that the adoption abroad was completed in accordance with the laws of the foreign-sending country. 8 C.F.R. 204.3(d)(1)(iv). The record contains a judgment dated December 25, 1998, in which Judge [REDACTED] of the K/Woreda Court approved the October 11, 1998, adoption of the beneficiary by the petitioner; however, a copy of the October 1998 adoption agreement is not contained within the record.

Further, on November 23, 1998, the U.S. Embassy in Addis Ababa had requested that Ethiopia's Ministry of Foreign Affairs provide a legal opinion regarding the legality of private adoptions in Ethiopia. In response, the Ministry of Foreign Affairs provided the U.S. Embassy with a letter dated December 12, 1998, which was prepared by the CYFAD, a department of the Ministry of Labor and Social Affairs. In its letter, the CYFAD stated that the Ministry

of Labor and Social Affairs "has been empowered by the Government to control as well as to undertake international adoptions by issuing the appropriate regulation" and that, in accordance with the regulation, the Ministry "takes the responsibility of contracting adoptions for eventual emigration of a child." The CYFAD concluded that the Ministry of Labor and Social Affairs does not recognize private adoptions and must validate all intercountry adoptions.

The petitioner subsequently submitted a legal brief dated February 19, 1999, in which counsel in Ethiopia argued that private adoptions in Ethiopia, "a private act of individuals that are involved in the scenario," are legal and authorized under Ethiopian Civil Code. The petitioner submitted a subsequent brief from counsel arguing that the Ministry of Labor and Social Affairs adoption guidelines do not overcome the Ethiopian Civil Code's language indicating that a private adoption, approved by a court of law, is a valid adoption.

As noted above, in its correspondence to the U.S. Embassy, Addis Ababa, the Ethiopian government has explicitly stated that it requires that all international adoptions be sanctioned by the Ministry of Labor and Social Affairs. The petitioner has not demonstrated that the Ministry of Labor and Social Affairs has provided its approval of the instant adoption. Accordingly, the petitioner has submitted insufficient evidence to establish that the beneficiary has been adopted abroad in accordance with the laws of the foreign-sending country.

On motion, counsel resubmits the above-cited briefs from the petitioner's Ethiopian counsel. Counsel also submits a copy of a letter dated April 25, 2000, addressed to the Library of Congress requesting advice on what the Ethiopian law states with regard to foreigners adopting children in Ethiopia and the role of the CYFAD. In response, the Library of Congress simply provided counsel with a copy of the Ethiopian Constitution. This information is also already contained within the record.

The petitioner's assertion that CYFAD's validation of private intercountry adoptions is not necessary is not supported by the U.S. Department of State. Current State Department instructions state the following:

PLEASE NOTE: In order to successfully complete an adoption in Ethiopia, U.S. citizens must work with the Ethiopian governmental central authority, the Children, Youth and Family Affairs Department (CYFAD) which is under the Ministry of Labor and Social Affairs. Americans who enter into private adoptions (private adoptions bypass the Children, Youth and Family Affairs Department) will not be able to take the child out of

Ethiopia, and will not be able to obtain a U.S. immigrant visa to bring the child legally into the U.S.

Counsel argues on appeal that the Associate Commissioner relied on the above State Department position but that State Department "did not issue its current instructions requiring CYFAD approval of all adoptions by U.S. citizens until after the [the petitioner's] case." While such instructions may not yet have been widely dispersed through State Department's adoption materials, the petitioner was fully aware of State Department's position before he initiated the adoption proceedings.

On October 23, 1998, the petitioner met with the consular officer in Addis Ababa. The consular office had met with the director of the CYFAD and advised the petitioner that:

[A]ccording to the CYFAD, all foreign adoptions must be authorized by his office. This national policy was established by a proclamation by the Prime Minister some years ago. In addition, private, foreign adoptions were allowed only in very special circumstances, those to be determined by the [CYFAD].

In a letter dated November 19, 1998, the CYFAD notified the petitioner that:

The Ministry of Labour and Social Affairs is the only authorized Ministry that deals with the abandoned, orphaned and children with special problems concerning inter-country adoption. Even private adoption is not a leeway for gathering children without the approval of the competent authority....

Therefore, from the date of the receipt of this letter we strongly advise you to stop the above mentioned act and return all the children you have collected illegally back to their respective parents and relatives and at the same time we would like to confirm that you are not legally approved to work with our department concerning intercountry adoption.

Although the petitioner was advised by the U.S. State Department and Ethiopia's CYFAD that the CYFAD must approve all adoptions, the petitioner disregarded this notice and submitted a petition to the Ethiopian court to adopt the beneficiary on December 9, 1998. The petitioner completed adoption proceedings on December 25, 1998. Counsel's argument that the Associate Commissioner's decision relies on State Department instructions that were prepared only after the petitioner completed the adoption of their daughters is without merit.

Counsel argues that where there are no known requirements that an adoption be approved by a state agency, the Service may not require that a foreign adoption be examined and approved by an agency of that foreign government. Matter of Ho, 18 I&N Dec. 152 (BIA 1981). In that case, the Board of Immigration Appeals (BIA) found that in the case of a child adopted in the People's Republic of China, the Service could not require that a foreign adoption be examined and approved by an agency of the foreign government because there were no known requirements that an adoption be examined or approved by a state agency or official in order to validate an adoption. Counsel states that "China had various requirements for adoption since the 1950s, but that the requirements are derived from policy and not the law," implying that policy requirements regarding an adoption would not have had the force of law. In fact, the BIA decision does not state that policy requirements would have been without effect. Citing a memorandum from the Library of Congress, the BIA decision notes that China had not promulgated statutes setting forth the requirements for the establishment of adoption, that any stated requirements would have been derived from policy, but that China did not distinguish law from policy. The BIA found that any the requirements for adoption in China at that time were unclear, but did not hold that a policy requirement would have been invalid.

In the instant case, Ethiopia has a Civil Code setting forth the requirements for an adoption, and the petitioner was made fully aware of the government's requirement that the CYFAD approve all adoptions. The two cases are in no way analogous.

Counsel also argues on appeal that the U.S. Embassy in Nairobi, Kenya has approved petitions involving private adoption without the consent of the CYFAD since the date that the instant petition was denied. However, an unpublished decision carries no precedential weight. See Chan v. Reno, 113 F.3d 1068, 1073 (9th Cir. 1997) (citing 8 C.F.R. section 3.1(g)). As the Ninth Circuit says, "[U]npublished precedent is a dubious basis for demonstrating the type of inconsistency which would warrant rejection of deference." Id. (citing De Osorio v. INS, 10 F.3d 1034, 1042 (4th Cir. 1993)).

As always in these proceedings, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The decision of the Associate Commissioner dated September 7, 2000, is affirmed.